

Ex. B to Cramer Declaration

PUBLIC REDACTED VERSION

EXHIBIT 1

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HIGHLY CONFIDENTIAL

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

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IN RE GOOGLE PLAY STORE Case No.:

ANTITRUST LITIGATION 3:21-md-02981-JD

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STENOGRAPHIC AND VIDEO-RECORDED

REMOTE VIRTUAL DEPOSITION OF

DAVID KLEIDERMACHER

Friday, July 12, 2024

9:02 a.m. PST

Stenographically recorded by:

Josephine H. Fassett, CCR, RPR

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2 to answer that question on the grounds of
3 attorney-client privilege.

4 MR. EVEN: I just want to understand
5 your objection, Mr. Olasa. Is it your
6 position that we're not entitled to know
7 what Mr. Kleidermacher was asked to give a
8 declaration on?

9 MR. OLASA: I think you're entitled to
10 ask him about the declaration and the basis
11 of the declaration, all of that. I don't
12 think you're entitled to ask him about
13 communications with counsel about the
14 declaration.

15 MR. EVEN: Okay. I think we'll need
16 to take that back. I disagree with that.

17 BY MR. EVEN:

18 Q. Did you ever consider the possibility of
19 providing a declaration that went beyond the
20 topics that made it into the declaration you
21 actually ended up filing?

22 A. No.

23 Q. Did you review any materials not
24 attached to your declaration in preparation for
25 putting together your declaration?

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2 A. Yes.

3 Q. And what materials did you review?

4 A. I reviewed the proposed injunction. I
5 reviewed my prior declaration as well. I believe
6 that is -- that's the only thing I can think of at
7 the moment.

8 Q. Okay. So just so I'm clear. So one
9 thing you reviewed, and I think you say in your
10 declaration that you reviewed parts or portions of
11 Epic's proposed injunction, is that right, in
12 paragraph 2?

13 A. Yes, I did review that.

14 Q. And so is it, did you review the whole
15 thing or did you review just portions of it?

16 A. I recall at least briefly reading the
17 entire document. I spent through, probably spent
18 through or skimmed through parts that weren't
19 relevant to -- to things that I would be
20 responding to.

21 Q. Okay. We'll get to that.

22 And then the other thing you say you
23 reviewed is your prior declaration, that's the
24 declaration that you've submitted in support of
25 Google's prior sort of long filing in response to

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2 the injunction?

3 MR. OLASA: Objection to form.

4 A. I read a -- I read my prior declaration.

5 I don't recall exactly when in the past couple of

6 weeks as we were developing this new declaration,

7 whether it was before or after, I don't recall.

8 Q. All right. So let me take that one step

9 at a time to make sure I understand your

10 testimony.

11 You submitted a declaration in support

12 of a 93-page document that Google submitted to the

13 court, I believe, back in the spring, correct?

14 A. Yes.

15 Q. And is that the declaration about which

16 you're talking about that you said you reviewed

17 that in connection with preparing this new

18 declaration?

19 A. Yeah, I reviewed it during the

20 preparation. I don't recall precisely when I

21 last -- when I first read that document, whether

22 it was before the declaration composition or

23 after.

24 Q. Got it. Thank you. That's helpful.

25 And so you did review the spring

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2 declaration, let's call it that, I don't have its
3 exact date memorized, but the spring declaration
4 you reviewed, you just don't remember whether that
5 was before you put pen to paper or during or at
6 some other time, but prior to filing this June
7 declaration, correct?

8 A. Correct.

9 Q. Okay. And other than the injunction and
10 the prior declaration, sitting here today, you
11 don't recall reviewing any other materials in
12 connection with your preparation of the June 24
13 declaration; is that your testimony?

14 A. Not that I can recall. I -- that I
15 certainly read before the document, before
16 composing.

17 Q. Okay. Just to make sure we're on the
18 same page. I didn't ask before you started
19 composing, I asked: Have you read any other
20 materials that you recall, other than your spring
21 declaration and the proposed injunction, before
22 you finalized your June 24 declaration and it was
23 filed with the court?

24 A. I can't state definitively that there's
25 any other document. I do not recall any other

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2 document I certainly read before completing the
3 declaration.

4 Q. Thank you.

5 Did you read Epic's proposed injunction
6 prior to preparing the June 24 declaration?

7 Strike that. Let me reask that.

8 Did you read Epic's proposed injunction
9 in whole or a portion thereof prior to being asked
10 to prepare the June declaration?

11 A. I don't recall when I was specifically
12 asked to prepare the declaration, so I can't say
13 for sure.

14 Q. Do you remember if you read Epic's
15 proposed injunction in connection with preparing
16 your prior spring declaration?

17 A. Yes, I did.

18 Q. Who provided you with Epic's proposed
19 injunction?

20 A. Same set of counsel we've been
21 discussing.

22 Q. In your declaration you state, as we
23 discussed, that you read portions of Epic's
24 proposed injunction relating to catalog access,
25 library porting, and distribution of third-party

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2 stores through the Play Store. Do you see that
3 in --

4 A. Yes.

5 Q. -- paragraph 2 of your declaration?

6 A. Yes, I see that.

7 Q. Who was it that instructed you to focus
8 on these parts of Epic's injunction when you are
9 perusing it?

10 MR. OLASA: Objection to form.

11 Mr. Kleidermacher, you can answer that
12 question to the extent it doesn't reveal
13 communications with counsel.

14 A. I don't recall counsel specifically -- I
15 don't recall specific instructions beyond the --
16 beyond the -- have a read of it instruction.

17 Q. Do you understand that there was a
18 proceeding in this case on May 23rd where the head
19 court what's known as a "hot tub" involving
20 economic experts discussing Epic's proposed
21 injunction?

22 MR. OLASA: Objection to form.

23 A. I have heard the term "hot tub" in
24 some -- one of the documents, but I don't, I don't
25 know anything more than that. I don't know

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2 anything of substance regarding the meeting.

3 Q. Okay. You were not in court during the
4 May 23rd hearing; is that right?

5 A. Correct.

6 Q. And did you read the transcript of the
7 May 23rd hearing?

8 A. I did not.

9 Q. Did you read the court's order of
10 May 23rd which laid out the court's invitation for
11 Google to file a proffer?

12 A. I did not.

13 Q. Do you have an understanding of what the
14 court had instructed Google to file?

15 A. No.

16 Q. Do you have an understanding of what the
17 court had instructed Google not to file?

18 A. No.

19 Q. Do you know whether the court invited
20 Google to file any declaration or opinion
21 addressing the security risks of third-party app
22 stores?

23 A. No.

24 Q. Do you know whether the court invited
25 Google to file anything about the security

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2 implications of any of the remedies?

3 A. No.

4 Q. Your declaration is, in fact, about the
5 security risks of third-party app stores, correct?

6 MR. OLASA: Objection to form.

7 A. That is a topic covered in the
8 declaration.

9 Q. And your declaration does, in fact,
10 cover the security implications of one of the
11 remedies that Epic proposed, namely the
12 distribution of third-party stores through the
13 Play Store, correct?

14 A. My declaration does discuss security
15 risks related to third-party app stores.

16 Q. Your declaration discusses security
17 risks that you foresee emanating from a
18 requirement from Google to distribute third-party
19 stores on the Play Store, correct?

20 A. Yes.

21 MR. OLASA: Objection to form.

22 Mr. Kleidermacher, just give me a
23 chance to interpose my objections.

24 Q. Did you consult with anyone at Google,
25 other than lawyers, about the contents of any

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2 aspects of your declaration?

3 A. No.

4 Q. So you spoke to no one about any portion
5 of your declaration before you put it together?

6 MR. OLASA: Objection to form.

7 A. I don't recall discussing anything
8 relevant to the contents of the declaration.

9 Q. Who drafted the first -- strike that.
10 Who put together the first draft of the
11 declaration?

12 A. The declaration is composed of writing
13 that I made as well as writing that the attorneys
14 made.

15 Q. And my question is: Who did the first
16 draft? Who took a blank piece of paper or a new
17 Word document or, you know, Google document and
18 started drafting something up, was that you or was
19 that the lawyers?

20 MR. OLASA: Objection to form.

21 A. I don't know who started the first
22 writing for the declaration as it was a
23 composition of things I wrote as well as lawyers.

24 Q. Is it fair to say that the drafting
25 process was an iterative process between yourself

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2 and the lawyers?

3 A. Yes.

4 Q. And how many drafts did you exchange
5 with the lawyers altogether?

6 MR. OLASA: Objection to form.

7 A. I wouldn't say there was exchange of
8 drafts, we had a working document.

9 Q. I just want to make sure I understand
10 the distinction you're drawing.

11 Did you have a working document, meaning
12 you had like a document that is shared and people
13 just entered their thinking into that?

14 A. Correct. There was a shared document
15 where we had the opportunity to collaborate.

16 Q. And how long -- strike that.

17 Was that a -- strike that.

18 Was the shared document that you just
19 described a shared Google document?

20 A. We were using Google documents, document
21 sharing, to collaborate, yes.

22 Q. And does -- does Google Docs have a
23 function that shows who created a document?

24 A. Yes.

25 Q. And if I -- if you were to look today

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2 into the shared documents, who would be shown as
3 the creator of the document, would that be you or
4 would that be a lawyer?

5 A. I don't know.

6 Q. You find, if you flip through the
7 declaration, can you ballpark for me how much, for
8 the text, how much of the text is text that you
9 put together and remain unchanged and how much of
10 it is text that was either put together by the
11 lawyers or was edited by the lawyers?

12 A. I find it difficult to ballpark that.

13 Q. Is the split closer to 50/50 or 90/10?

14 MR. OLASA: Objection to form.

15 A. I don't really know how to make an
16 estimate that would be useful here.

17 Q. You have no clue who wrote more of this
18 text, you or the lawyers?

19 A. I think it's --

20 MR. OLASA: Objection.

21 A. I think it's difficult because the
22 document was collaborated. Because of the
23 collaboration, their comments and edits and
24 suggestions that occur which make it, I think,
25 difficult to make an estimate.

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2 Q. Did anyone at Google -- well, strike
3 that.

4 Other than yourself and lawyers, is
5 there any other Google employee who had access to
6 these shared documents?

7 A. Not that I'm aware of.

8 Q. Did anyone at Google review and provide
9 feedback on the declaration, other than lawyers?

10 A. Not to me, not that I'm aware of.

11 Q. Those are two different questions --
12 different answers. Let me make sure I understand
13 it.

14 You're not aware of anyone at Google who
15 is not a lawyer who provided any feedback or
16 comments on the declaration; is that your
17 testimony?

18 A. Yes.

19 Q. Now, you're aware that Mr. Cunningham --
20 strike that.

21 Are you aware that Mr. Cunningham,
22 Mr. Buchetti, and Mr. Kramer also submitted
23 declarations alongside yours?

24 A. Yes.

25 Q. Were you aware that Mr. Cunningham,

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2 the security and privacy aspects of the -- of
3 these Google, made for Google, made by Google
4 products, correct?

5 A. Yes.

6 Q. And by contrast you're not responsible
7 for developing these made by Google products,
8 correct?

9 A. My team would typically be responsible
10 for small pieces of the product.

11 Q. And the small pieces of the product that
12 you would be responsible for, or your team would
13 be responsible for, are those portions of the
14 product that pertain to security and privacy,
15 correct?

16 A. Yes.

17 Q. And so if Google is, for instance,
18 developing a new version of Google Maps, your team
19 is not going to touch the user interface or the
20 GPS functionality or anything like that unless it
21 has some security aspect to it that you need to
22 review and maybe contribute to, correct?

23 A. That seems fair.

24 Q. And instead, the team that would design
25 the product itself would be a product team,

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2 correct, for the particular --

3 MR. OLASA: Objection to form.

4 Apologies. Go ahead.

5 A. It would be a set of product teams
6 working on those other parts of the product, yes.

7 Q. And so, for instance, here if the court
8 ordered Google to have a storefront within the
9 Play Store for listing third-party app stores,
10 your team would not be the one responsible for
11 designing that storefront, right, that would be a
12 Play product team, correct?

13 A. That would be my expectation, yes.

14 Q. So before we get to the vetting, is it
15 fair to say that the Play Store is technologically
16 capable today of hosting and installing
17 third-party stores?

18 A. I do not believe it -- I do not believe
19 so.

20 Q. You don't believe that the Play Store is
21 technologically capable of hosting an APK from
22 like the Amazon store and getting it installed on
23 phones?

24 A. I mean it -- obviously, the Play Store
25 is capable of hosting APKs that can be downloaded.

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2 So as much as that's the minimum bar, then it
3 could do other apps, other APKs, and host them.
4 But I was -- sorry, go ahead.

5 Q. No. Sorry. I didn't mean to cut you
6 off. Please.

7 A. I wasn't sure if you were maybe
8 referring to like the actual proposed injunction
9 and how that would work. And, obviously, it would
10 be more work required to implement all aspects of
11 that, and so that's why I was, that's why I was
12 hesitating to say yes.

13 Q. I understand that you have a view that
14 this requires a lot of work and a lot of cost and
15 I read your declaration and we'll speak to all of
16 that. What I'm asking now is just simply as a
17 technological matter.

18 The Google Play Store -- well, let me
19 take a step back.

20 An app store like the Amazon Appstore or
21 the Epic Game Store, should it launch, is just an
22 APK, it's another app, correct?

23 A. Correct.

24 Q. And the Google Play Store is capable
25 today of hosting such an APK and installing it,

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2 correct?

3 A. You mean without any modifications?

4 Q. Yes. As it is today. Well, there'll be
5 rule modifications that we'll speak about, or
6 policy modification and maybe other modifications
7 that are -- that you think are necessary to secure
8 stuff. But as a technical matter, Google Play
9 Store today could ingest the Amazon store APK,
10 host it, make it available to users, and install
11 it on users' Android devices, correct?

12 A. You're asking if the Play Store can host
13 APKs, and the answer to that question is yes.

14 Q. And I think you say that, in your
15 declaration, "the app store doesn't have a
16 technological distinction between an APK that is
17 the Amazon store and an APK that is the Amazon
18 retail store that it hosts today," correct? An
19 APK is just an APK.

20 A. So you're -- I'm not sure I understand
21 your question.

22 Q. All I'm saying is, you state in your --
23 strike that.

24 You state in your declaration that --
25 and we'll get to that -- that Android doesn't have

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2 a technological or other definition of app store,
3 correct?

4 A. Correct.

5 Q. For Android, "app store" is just another
6 APK with certain permissions attached to it,
7 correct?

8 A. Correct.

9 Q. And all I'm saying is: For the Play
10 Store too, there is no technological or other
11 distinction between -- well, strike that.

12 For the Play Store too there is no
13 technological definition of an app store, it's
14 just another APK that the store can host and can
15 install on people's devices, correct?

16 A. There is an APK representing the Play
17 Store.

18 Q. If there is an APK that represents the
19 Amazon store, or the Epic Game store, the Play
20 Store today would be capable of hosting that APK
21 and getting it installed on people's devices as a
22 technological matter, correct?

23 A. The Play Store has the capability to
24 host and download APKs.

25 Q. And that includes APKs that can then

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2 install other things?

3 A. That seems fair.

4 Q. And the only thing that currently
5 prevents the Play Store from distributing
6 third-party stores is a rule, not a technological
7 impediment, correct?

8 A. Well, there's a -- there's an impediment
9 in the safety parts of it, so by technological
10 impediment you mean just like the physical app,
11 like aspect of installing?

12 Q. Correct. And the only thing that
13 currently prevents the store from installing
14 third-party stores as a physical technological
15 thing is just that there is a rule that says, "You
16 the developer may not submit to us APKs that have
17 the goal of installing other APKs outside of
18 Play," correct?

19 A. I see what you're saying.

20 Yeah, so if we ignore safety, then the
21 physical ability to install is there.

22 Q. And you understand that Google right now
23 prevents that through a rule, correct?

24 A. We have policy against the distribution
25 of third-party app stores, yes.

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2 Q. And that policy is, in fact, part of
3 what's known as the DDA, you know that?

4 A. I know a DDA exists, I don't, I don't
5 know -- there may be multiple places where that
6 policy is mentioned. I don't know if the DDA is
7 the only place.

8 Q. Do you know that the DDA is one of the
9 places where that policy is manifested?

10 A. I don't recall on reading the DDA in the
11 past, so I can't say one way or the other, but...

12 Q. Okay. Maybe we'll get there later
13 today.

14 THE VIDEOGRAPHER: Pardon,
15 Mr. Kleidermacher, could you move to your
16 left a little bit, you're getting off
17 center.

18 Thank you so much. I appreciate it.

19 MR. EVEN: As am I, but nobody's
20 recording me. Thank God.

21 Q. And so, just so we're clear. So your
22 declaration addresses not the tech work or the
23 cost of -- well, let me take a step back.

24 You said that you read Epic's injunction
25 and the portions that are related to carrying

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2 there is no standard or minimum requirement for
3 safety of these stores or their developers today,
4 correct?

5 A. Correct.

6 Q. And I think you also agreed with me that
7 with the exception of, with the exception of
8 malware or known malware, there is no, currently
9 no Google-imposed standard or minimum requirement
10 for the safety of the apps that third-party app
11 stores carry and distribute, correct?

12 A. Beyond malware, I don't know of any
13 other. I believe that's correct, yes.

14 Q. And Google does not and never has vetted
15 the apps distributed by third-party stores before
16 they were being installed by OEMs or Android
17 users, correct?

18 A. Not in any comprehensive way.

19 Q. Can you detail the non-comprehensive way
20 by which Google vetted the apps distributed by
21 third-party stores before they were being
22 installed by users from the web or by OEMs through
23 pre-installation?

24 A. It's possible that some apps on those
25 stores if they'd been installed prior to the

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2 preload that they may have gone through a Play
3 Protect scan, which again is not a full vetting of
4 the app, but...

5 Q. Okay. So there are, setting aside Play
6 Protect which applies to all apps regardless of
7 source on all devices, right, that's how Play
8 Protect operates?

9 A. If they're installed then they get some
10 level of scan.

11 Q. I think we've established that either in
12 court or in prior testimony. But Play Protect
13 looks into or tries to identify malware prior to
14 the -- to any installation of an app and as to the
15 installed base of apps on all devices where it's
16 operative, correct?

17 A. Play Protect will scan, will perform a
18 scan at installation time.

19 Q. And Play Protect will run a scan at
20 installation time on all apps regardless of
21 source, correct?

22 A. Correct.

23 Q. And so setting aside Play Protect, which
24 scans all the apps all the time on all devices,
25 Google does not and never has vetted through an

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2 app review or similar process the apps that are
3 distributed by third-party stores before those
4 stores were being installed by OEMs or by Android
5 users, correct?

6 A. They do not go through our full trust
7 and safety process review, correct.

8 Q. But according to your declaration, what
9 you state is that Google would need to vet all the
10 apps carried by these stores if these stores would
11 be distributed on Google Play rather than being
12 pre-installed by an OEM or downloaded by a user,
13 correct?

14 A. You said need to do it. As the head of
15 security, it's my opinion that that would be the
16 right thing to do.

17 Q. Let me make sure I understand the
18 distinction you're drawing.

19 You say that your declaration is not
20 that that is what Google would need to do, but
21 rather that is what you would recommend as head of
22 security?

23 A. Correct.

24 Q. Who would you recommend this to?

25 A. I would recommend that to any final

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2 decision-maker on the disposition of this if we
3 were forced to do it.

4 Q. Setting aside whether this is a need or
5 a recommendation by you, the gist of your
6 declaration is that Google ought to vet all the
7 apps carried by third-party stores, if those
8 stores would be distributed by Google Play, even
9 though Google does not perform such vetting for
10 stores that are pre-installed by OEMs or
11 downloaded from the web, correct?

12 A. Correct.

13 Q. All right. Let's talk a little bit more
14 about that, and if you can turn to paragraphs 4
15 and 5 of your declaration. Are you there?

16 A. Yes.

17 Q. So these paragraphs come under the
18 heading Security Risks of Third-Party App Stores,
19 correct?

20 A. Yes.

21 Q. And these paragraphs are intended to
22 explain why you believe Google would need to vet
23 the apps carried by any stores that would be
24 distributed through the Play Store, correct?

25 A. At least paragraphs 4 and 5 and perhaps

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2 once Epic launches an Epic Game store on Android,
3 that Epic Game store might be more secure than
4 Google Play, correct?

5 A. I don't know how you would measure that.

6 Q. Well, let's start by the most obvious.

7 Epic currently has a few thousand games
8 on it. Do you understand that?

9 A. I have no idea what it has on it.

10 Q. Okay. Let's assume a third-party store
11 with a few thousand games from a reputable
12 developer. Can we assume that?

13 A. Okay.

14 Q. You agree with me that it's much easier
15 to ensure the security and safety of a store with
16 3,000 or 4,000 apps than to ensure the security
17 and safety of the apps on the Play Store, correct?

18 A. I think if Google were vetting it, I
19 think it would be easier for Google to do it.

20 Q. It would be easier for anyone who isn't
21 tasked with both something the size of the Play
22 Store and a 3,000 app store to vet the 3,000 one
23 than to vet the Play Store, correct?

24 A. If an independent party, if the same
25 party was vetting an app store of millions of apps

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2 versus an app store of thousands of apps, then,
3 all else being equal, the few thousand apps should
4 be less work or should be easier.

5 Q. Now -- let me try it a different way.

6 The risk you identify is not that
7 third-party stores are necessarily unsafe but
8 rather that Google has no way of assessing their
9 quality and security, correct?

10 A. The problem is not necessarily that
11 Google doesn't know, the problem is that the lack
12 of knowledge in measurement translates to user
13 risk.

14 Q. Well, you specifically say in
15 paragraph 5 that "Nor do we have a good way of
16 measuring the risks that a particular third-party
17 app store may pose to users," right?

18 A. That is what I said.

19 Q. And that is the crux of the problem that
20 you are --

21 A. Yeah.

22 Q. -- that Google is being made to
23 distribute stores that it does not know whether
24 they're safe or not absent vetting, right?

25 A. And that is why it causes risk to users.

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2 installing other apps with user consent as well or
3 just without?

4 A. No. What I'm referring to is the risk
5 of an installer being able to install apps without
6 user consent.

7 Q. Okay. So when you say, "any app capable
8 of installing other apps," you mean any app that
9 has the install packages permission, right?

10 MR. OLASA: Object to form.

11 A. I'm not specifically saying that. I'm
12 not specifically referring to any specific
13 permission but more the behavior of the system.
14 The future system such as not yet implemented.

15 Q. So let's assume we have something today
16 that is capable of installing other apps such as
17 the Amazon Appstore. Yes? Why would it give a
18 powerful new tool for bad actors to harm users if
19 that store were now distributed through the Play
20 Store as opposed to being pre-installed by
21 Samsung?

22 A. I'm not specifically referring to the
23 Amazon store, I'm referring to the general
24 capability of third-party app stores that allow
25 installs without user consent.

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2 Google also never told anyone at Google that here
3 is the billions of dollars that Google needs to
4 expand on that undertaking of vetting all the app
5 stores on every pre-installed store, correct?

6 MR. OLASA: Objection to form.

7 A. I'm not sure how your second question is
8 different from the first question. Are you asking
9 if I've suggested that we should vet third-party
10 apps? I think I already said no.

11 MR. OLASA: Objection to form.

12 Q. And I'm saying as part of that you also
13 never tried to quantify the cost to Google of
14 trying to do that?

15 A. I have not tried to quantify the cost to
16 do that.

17 Q. Okay. Now, the fact that Android has no
18 standard minimum requirements for the safety of
19 app stores is a feature, not a bug of Android,
20 correct?

21 MR. OLASA: Objection to form.

22 A. I would -- I don't -- wouldn't consider
23 it a feature or a bug but more of a result of the
24 way the ecosystem works.

25 Q. Well, it's not something that Google is

1 HIGHLY CONFIDENTIAL - KLEIDERMACHER

2 seeking to rectify, correct?

3 A. We constantly have discussions about the
4 balance between improving safety, vetting
5 developers, vetting apps and the control that the
6 device manufacturer, such as Samsung, would expect
7 and demand in the ecosystem.

8 Q. So that wasn't responsive to my
9 question.

10 The fact that there is no standard or
11 minimum requirement for the safety of app stores,
12 third-party app stores, is not something that
13 Google is currently working to rectify, correct?

14 MR. OLASA: Objection to form.

15 A. There has been some discussions about
16 the possibility of creating such a standard, so I
17 can't say there's been no work on that.

18 Q. Is there a workgroup that is currently
19 developing changes to the matter, to the Google
20 policies, to what Android does that would
21 introduce standards or minimum requirements for
22 the safety of app stores?

23 A. You're asking me if there's discussions
24 within Google?

25 Q. No, I'm asking if there's an actual

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2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 Q. Now, at the end of paragraph 5 you state
11 that if Google Play distributes any third-party
12 app stores, app store -- sorry -- without
13 reviewing the apps hosted by that store, Google
14 itself would be exposing Android users and its own
15 Play customers to potentially significant risks
16 that are outside Google's ability to manage. Did
17 I read that correctly?

18 A. Yes.

19 Q. Now, that sentence is intended to
20 explain why you believe that the risk of unvetted
21 third-party stores is unacceptable for Play
22 distributed stores, correct?

23 A. Yes.

24 Q. And specifically that sentence is
25 intended to explain why the risk of unvetted

1 HIGHLY CONFIDENTIAL - KLEIDERMACHER
2 third-party stores is unacceptable for Play
3 distributed stores even though Google tolerates
4 that risk when it comes to third-party stores that
5 are distributed through other means like
6 pre-installation or from the web, correct?

7 A. That seems fair.

8 Q. Now, the distinction you're drawing here
9 is that when a third-party store is being
10 downloaded from the Play Store, then Google
11 itself, I think that's the crux of your statement,
12 is a link in the causal chain that leads
13 potentially to harm to users, correct?

14 A. I would say that it is due to the fact
15 that it is a Google Play downloaded app store.

16 Q. And because it is a Google Play
17 downloaded app store, in your view that makes
18 Google part of the causal chain that leads to a
19 heightened risk as opposed to stores that come
20 from other places, correct?

21 A. I would say there is a stronger
22 connection to the user experience because it's
23 coming from the Google property.

24 Q. So you think Google is part of that user
25 experience both for stores that are downloaded

1 HIGHLY CONFIDENTIAL - KLEIDERMACHER
2 from the web or pre-installed and for stores
3 coming from Google but it plays a bigger role when
4 those stores come from Play; is that the
5 distinction you're drawing?

6 A. A bigger role from the respect of like
7 brand damage, yes.

8 Q. Got it. I want to get to this brand
9 damage point.

10 First of all, just to make clear. When
11 you stated Google itself would be exposing Android
12 users and its own Play Store customers to risk,
13 you're not providing a legal opinion that Google
14 could or should be held accountable to harm caused
15 by apps that are downloaded from stores that were
16 themselves downloaded from Play, correct?

17 A. I'm making a safety and security
18 opinion.

19 Q. Okay. So you say you're making a safety
20 and security opinion. I take it you're not making
21 a legal opinion, that's what that means, right?

22 A. Yes.

23 Q. And you mentioned security and safety in
24 the context of brand. Are you opining that users
25 would view Google as the cause of harm if that

1 HIGHLY CONFIDENTIAL - KLEIDERMACHER

2 harm is caused by apps downloaded from non-Google
3 stores that were themselves downloaded from Play?

4 A. Well, yes, because Google distributed
5 them.

6 Q. Now, you do not cite any study or
7 evidence to show that's what users would think,
8 correct?

9 A. It's based on my experience.

10 Q. That's not what I asked. You do not
11 cite any study or evidence to show that's what
12 users would think, right?

13 A. I do not cite any studies in the
14 declaration.

15 Q. And you're not an expert on what users
16 think, correct?

17 A. I have significant experience in how
18 users react to safety problems in the Google Play
19 Store.

20 Q. You don't have any experience of how
21 users react to safety issues in an app they
22 downloaded from a third-party store when that
23 store was downloaded from Play, correct, that
24 would be a new experience for you?

25 MR. OLASA: Objection to form.

1 HIGHLY CONFIDENTIAL - KLEIDERMACHER

2 law, then it is theoretically possible to
3 advertise.

4 Q. Google could even advertise, "I'm not
5 doing it because I like it, I have a court order
6 that makes me distribute these stores," correct?

7 A. If there is no law precluding an
8 advertisement, then any advertisement in theory
9 could be issued.

10 Q. Assuming Google advertises all these
11 facts, is it still your view that users would
12 somehow think that Google is responsible for harm
13 emanating from an app they downloaded from a store
14 that once upon a time they downloaded from Play?

15 A. There is no doubt in my mind that
16 advertising would not preclude Google being blamed
17 for the harm coming from third-party app stores
18 distributed on Play.

19 Q. Is it your view that users just wouldn't
20 understand that Google has nothing to do with this
21 app?

22 A. That may be a reason why we would be
23 blamed. They may not understand it.

24 Q. Do you have any evidence to show that
25 users just wouldn't understand that apps

1 HIGHLY CONFIDENTIAL - KLEIDERMACHER
2 downloaded from Amazon have nothing to do with
3 Google Play?

4 A. My experience is based on how users
5 complain to Google about bad things happening in
6 the store that are not directly related to
7 anything Google did other than distribute it.

8 Q. I understand. Here nothing bad is going
9 to happen from the Amazon store or from Play, it's
10 only an app that was downloaded from Amazon and
11 presumably or potentially doesn't even exist on
12 Play. Is it your testimony that users with all of
13 Google's might, Google can't explain to users
14 sufficiently well such that users understand that
15 Google doesn't have anything to do with that app?

16 A. It is my strong opinion that regardless
17 of any advertising Google would do that Google
18 would be blamed for harm coming from third-party
19 app stores distributed from Google Play.

20 Q. And it's your testimony that Google is
21 unable to explain to users such that users
22 understand that Google has no affiliation or
23 relationship to that app that was downloaded from
24 another non-Google store simply because that
25 third-party store was once upon a time downloaded

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2 from Play?

3 A. The Google explanation, any Google
4 explanation in the form of advertising or
5 otherwise, in the form of disclosure or whatever,
6 wouldn't prevent users from complaining to Google
7 about the harm.

8 Q. And in your view Google -- strike that.

9 In your view those complaints would be
10 grounded in user misunderstanding of the fact that
11 Google has nothing to do with that third-party
12 app?

13 A. I'm not saying it's totally due to
14 misunderstanding. It would be grounded in the
15 fact that the user was harmed and they were angry
16 and they would think, how did this happen, and in
17 their experience it came from Google Play, and we
18 would be blamed.

19 Q. Would Google then explain to them, next
20 time only download apps from the Google Play
21 Store, that's what we told you for a year now?

22 A. I'm sure there are many things we would
23 try to do to try to help assuage the brand damage.

24 Q. I'm not seeing the brand damage, that's
25 why I'm asking, Mr. Kleidermacher.

1 HIGHLY CONFIDENTIAL - KLEIDERMACHER

2 Q. Maybe I'm misunderstanding something, so
3 let me start from the beginning.

4 Epic's proposed injunction simply says,
5 if there's an app store, you will need to agree to
6 distribute it, you Google, right?

7 A. Right.

8 Q. Why does the risk of doing that have
9 anything to do with the definition of what is an
10 app store?

11 A. Because there is no definition for app
12 store in the Android operating system. So Epic is
13 using a term that doesn't exist as an entity in
14 the Android operating system.

15 Q. And when you say, "merely means any app
16 capable of installing other apps," as opposed to
17 what?

18 A. As opposed to apps that don't install
19 other apps.

20 Q. Well, apps that don't install other apps
21 clearly are not app stores, correct?

22 A. Yes -- well, I guess in the context of
23 this discussion, yes.

24 Q. Okay. So, so what is exactly the issue
25 here that you are identifying with -- or strike

1 HIGHLY CONFIDENTIAL - KLEIDERMACHER

2 that.

3 What is the definition that you think
4 would prevent this from becoming a powerful new
5 tool for bad actors to harm users?

6 A. Sorry, you're asking me to try to define
7 app store?

8 Q. I'm asking what is the problem with the
9 definition an app that is capable of installing
10 other app in your view?

11 A. You're asking me what is the problem of
12 an app that can install other apps?

13 Q. No, I'm asking you why is that a bad
14 definition for app store.

15 A. Oh. The -- if an app is capable of
16 installing other apps without user consent that
17 would be a -- that would be a dangerous addition,
18 that would be a dangerous change.

19 Q. Again, I think we're misunderstanding
20 each other, so.

21 I understand that when you say "any app
22 capable of installing other apps" what you really
23 mean is any app capable of installing other apps
24 without user consent, right? That is the problem
25 you're identifying?

1 HIGHLY CONFIDENTIAL - KLEIDERMACHER

2 Q. A bad app -- so any app that is capable
3 of installing other apps potentially could be a
4 vector of harm today by distributing through other
5 channels, correct?

6 A. Like sideloading?

7 Q. Sideloading, pre-loading, et cetera.

8 A. Sure.

9 Q. And the only change here is that these
10 apps will now be needed to be carried through the
11 Play Store, correct?

12 A. That's not the only requirement.

13 Q. That's the only requirement --

14 A. There's plenty of other requirements in
15 the injunction other than just you have to carry,
16 carry the app store.

17 Q. Other operating systems such as Windows,
18 Mac, macOS, Linux allow for the installation of
19 third-party app stores, correct?

20 A. I actually don't know. I mean, I
21 believe that is generally true, but I don't know
22 the details of those other operating systems.

23 Q. I understand you don't know the details,
24 but you understand that generally you can have
25 Steam or the Epic Games Store or a host of -- or

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2 the Adobe Store or a host of other stores that are
3 apps that can install other apps being installed
4 on a Windows PC or on a Mac or on a PC running
5 Linux, correct?

6 A. Certainly Windows Steam I've heard of.
7 And Linux, since it's a generic operating system,
8 could support essentially arbitrary UIs, including
9 app stores, so that seems fair.

10 Q. Okay.

11 A. I'm not sure that was enough to know
12 whether MacOS supports app stores.

13 Q. Okay. If I tell you that Steam is
14 available on Mac, that is not -- you don't have a
15 basis to contest?

16 A. No.

17 Q. Okay. Are you aware of how these other
18 operating systems define app store?

19 A. No.

20 Q. Do any of these other operating systems
21 have any distinction between app stores and other
22 apps except the ability to install apps?

23 A. I don't know.

24 Q. Did you look into any industry
25 definitions of app store in preparing your

1 HIGHLY CONFIDENTIAL - KLEIDERMACHER

2 declaration?

3 A. Not during the preparation, no.

4 Q. Have you been able to find any broadly
5 accepted definition of the term app store other
6 than an app that is capable of installing other
7 apps?

8 A. I have seen attempts to describe app
9 stores in different ways than just the ability to
10 install other apps.

11 Q. What other, what other vectors or
12 parameters were used in those definitions?

13 A. The concept of having developers
14 register, you know, go through the process of
15 actually submitting an app would be one example of
16 things I've seen before.

17 Q. Where did you see that?

18 A. The -- the U.K. government has something
19 called a Code of Practice which is a document
20 where they describe some minimum security
21 requirements for app stores.

22 Q. Okay.

23 MR. EVEN: If we can -- let me mark as
24 Exhibit 9003, if we can have Tab 15.

25 (Google Play Developer Distribution

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2 Agreement marked as Exhibit 9003, as of
3 this date.)

4 MR. EVEN: Tell me once you have that
5 up.

6 THE WITNESS: I'm not seeing anything
7 update here.

8 Oh, here it is.

9 Okay. I have the document up.

10 BY MR. EVEN:

11 Q. Okay. Do you see that this is a
12 document that is, the heading of which is Google
13 Play Developer Distributor -- Distribution
14 Agreement?

15 A. Yes.

16 Q. And do you understand that this is the
17 document we discussed earlier today that's
18 referenced to as the DDA?

19 A. That is what it appears to be.

20 Q. And you understand that every developer
21 that wants to distribute anything on Google Play
22 must sign one of these agreements or
23 click-through?

24 A. That is my understanding.

25 Q. Okay. If you look under Definitions,

1 HIGHLY CONFIDENTIAL - KLEIDERMACHER

2 you see that there's a definition on page 2 of
3 Products. Do you see that?

4 A. On page 2?

5 Q. Correct. Second page.

6 A. Products. Okay.

7 Q. And you see that it says: Software,
8 content, digital materials, and other items and
9 services as made available by developers via the
10 Play concept. Do you see that?

11 A. Yes.

12 Q. Do you understand that products in
13 this -- strike that.

14 Do you understand that the
15 quintessential product alluded to here is an app?

16 MR. OLASA: Objection to form.

17 A. I do not know what's meant here by that.

18 Q. You understand that apps would be
19 covered by products. It's a software that is made
20 available by developers via the Play console,
21 correct?

22 MR. OLASA: Objection to form.

23 A. I'm not familiar with this document, so
24 no, I don't know what it's referring to.

25 Q. Okay. If you go to 4.5, that is on the

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2 sixth page, I think. Sorry, fifth.

3 A. I see it.

4 Q. Do you see that this says: You may not
5 use Google Play to distribute or make available
6 any product that has a purpose that facilitates
7 the distribution of software applications and
8 games for use on Android devices outside of Google
9 Play. Do you see that?

10 A. Yes.

11 Q. Do you understand that this is a section
12 that is intended to say you cannot distribute app
13 stores on Google Play?

14 MR. OLASA: Objection.

15 A. I mean, it seems like a sensible
16 interpretation, but I'm not familiar with the
17 wording.

18 Q. Okay. You see that this speaks to
19 products, let's assume for now that that includes
20 apps, that has a purpose that facilitates the
21 distribution of software applications and games
22 for use on Android devices outside of Google Play.
23 Do you see that?

24 A. Yes.

25 Q. Would that definition of app store help

1 HIGHLY CONFIDENTIAL - KLEIDERMACHER

2 alleviate the concerns you raise in number 6, in
3 paragraph 6 of your declaration?

4 A. Are you asking if we, if we adopted this
5 as a definition for app store whether it would
6 remove my concern?

7 Q. Yes.

8 A. No.

9 Q. Okay. So the issue is not a lack of
10 definition, the issue is the fact that there
11 exists out there apps that are capable of
12 installing other apps without user concerns; is
13 that fair?

14 MR. OLASA: Objection to form.

15 A. My concern is that the scope of what
16 would be distributing apps should be better
17 specified, including its capabilities.

18 Q. And why does it need to be better
19 specified?

20 A. Because what I'm worried about from the
21 safety perspective is apps that is -- is someone
22 creating an app that can then distribute other
23 apps without the user, the user's consent.

24 Q. And you're concerned about it because
25 you think it's a bad thing that we would have apps

1 HIGHLY CONFIDENTIAL - KLEIDERMACHER
2 that can install other apps without user consent,
3 correct, as a security thing?

4 A. Yes.

5 Q. And you understand that the injunction
6 does not require Google to change its policy as to
7 whether people can or cannot build apps that can
8 install other apps with or without user concern --
9 consent?

10 MR. OLASA: Objection to form.

11 A. Well, I think that is the concern.
12 Because it wasn't, at least from my understanding,
13 it wasn't clear, and it seemed to me an
14 interpretation is that we would need to allow
15 these apps to install.

16 MR. EVEN: Okay. We've been running
17 about half an hour, so let's go off the
18 record.

19 THE VIDEOGRAPHER: Very well. We are
20 now going off the record at 12:29 p.m.
21 Pacific and this ends Media Unit 3.

22 (Off the record.)

23 (Lunch recess.)

24

25

1 HIGHLY CONFIDENTIAL - KLEIDERMACHER

2 Google has not made a final decision on whether or
3 not to implement vetting of apps on third-party
4 stores should the court order such stores to be
5 carried on Play?

6 A. Yes.

7 Q. Whose idea was it that Google would
8 essentially vet all apps on third-party stores
9 distributed on Play?

10 A. It was, it was my idea.

11 Q. Okay. And who besides you was involved
12 in coming up with this idea?

13 A. Sorry, could you repeat that?

14 Q. Sure. Who besides yourself was involved
15 in coming up and developing this idea?

16 MR. OLASA: Objection to form.

17 A. No one else contributed to my -- to the
18 idea that I wrote in the declaration.

19 Q. Were there any meetings where vetting
20 third-party app catalogs in connection with Epic's
21 proposed remedy was discussed?

22 MR. OLASA: Mr. Kleidermacher, you can
23 answer that question, but in answering
24 please don't disclose the substance of any
25 communications with counsel.

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2 A. No conversations beyond the discussions
3 with counsel we alluded to earlier.

4 Q. And the discussion with counsel you
5 alluded to earlier you mean discussions in the
6 context of preparing your declaration, correct?

7 A. Correct.

8 Q. Who is the highest ranking Google
9 executive that has signed off on this idea of
10 vetting apps of third-party stores distributed by
11 Play to date?

12 A. I'm not sure what you mean by "signed
13 off," you mean approve the declaration?

14 Q. No. I mean, approve the idea that if
15 Google is ordered to carry third-party stores on
16 Play, that would be Google's response to go ahead
17 and invest what you estimate to be half a billion
18 dollars in vetting third-party stores?

19 A. Oh. We don't make decisions based on
20 ideas.

21 Q. I'm not sure that's responsive to my
22 question, so my question was: Who is the highest
23 ranking Google executive that has signed off on
24 this plan to date?

25 A. This isn't a plan.

1 HIGHLY CONFIDENTIAL - KLEIDERMACHER

2 Q. Is it a contingency plan?

3 A. It is my recommendation of what we would
4 do if forced to comply.

5 Q. Got it. Who would you be making this
6 recommendation to should Google be ordered to
7 carry third-party stores on Play?

8 A. Typically a recommendation like this
9 would be reviewed by a wide range of people. The
10 senior, senior stakeholders in the Android
11 Ecosystem. Possibly all the way up to including
12 Pichai.

13 Q. So you said you're directly reporting to
14 Seang Chau these days. Am I butchering the name?

15 A. That's correct.

16 Q. Is that a he or a she? I apologize.

17 A. He. He.

18 Q. Would Mr. Chau be involved in the
19 decision to adopt vetting of the catalogs of
20 third-party stores?

21 A. I would expect he would at least be
22 consulted.

23 Q. Would Mr. Samat be consulted or involved
24 in that decision-making process?

25 A. That would be very likely.

1 HIGHLY CONFIDENTIAL - KLEIDERMACHER

2 Q. Okay. What about Mr. Lockheimer, would
3 he be involved?

4 A. No. He has since taken on a different
5 role at Google.

6 Q. Got it. Who does Mr. Samat report to
7 these days?

8 A. He reports to Rick who is the senior
9 vice president of our division.

10 Q. And what is the last name of Rick?

11 A. It's escaping me at the moment.

12 Q. Is that Rick Osterloh?

13 A. Yes.

14 Q. Would Mr. Osterloh be involved in the
15 decision-making process?

16 A. Very likely.

17 Q. Who does Mr. Osterloh report to?

18 A. He reports to the CEO of Google, Sundar.

19 Q. And you said that you believe Mr. Pichai
20 potentially would be involved in the decision as
21 well, correct?

22 A. Possibly.

23 Q. A decision requiring an expense of north
24 of [REDACTED] a year, by your estimate, who
25 would be authorized to approve that?

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2 A. I mean, I have made large -- I have made
3 proposals that are large and -- in terms of their
4 scope, but I -- I don't recall estimating anything
5 of in the realm of [REDACTED] of
6 dollars -- actually, I made an estimate that
7 something would cost [REDACTED] of
8 dollars. Nothing is coming to mind right now.

9 Q. So this would be the first time you made
10 that kind of recommendation?

11 MR. OLASA: Objection to form.

12 A. Yeah. The recommendation -- first of
13 all, the estimates of the -- the estimates are
14 rough estimates and I wouldn't say they're
15 [REDACTED] either. In my case. In the
16 case of the declaration, I did not state that they
17 were [REDACTED]

18 Q. Okay. Your estimates here are in the
19 range of [REDACTED] a year; is that right?

20 A. It is a rough estimate based on some
21 percentage of growth, which I state is very, very
22 difficult to estimate.

23 Q. Okay. Sorry. Didn't --

24 A. Based on that, based on those
25 disclaimers, yes, it's in the [REDACTED]

1 HIGHLY CONFIDENTIAL - KLEIDERMACHER

2 Q. Is this the first time that you
3 estimated that Google -- strike that.

4 Is this the first time that you've
5 recommended Google adopt a measure that would cost
6 roughly in the vicinity of [REDACTED] a year?

7 A. As I said with your earlier question, I
8 have made large -- I have made
9 proposals/recommendations that are very large in
10 scope, but I do not -- have not attempted to
11 estimate those in dollar for like that.

12 Q. Have you made recommendations that are
13 large in terms of the cost associated with them
14 that have been rejected?

15 A. Not that I can recall.

16 Q. If we go to paragraph 9 of your
17 declaration, and here what you contemplate is that
18 Google would extend its first-party app review --
19 strike that.

20 In paragraph 9 what you contemplate is
21 extending Google's app review of the APKs that are
22 carried on Play itself to the APKs of apps that
23 are listed on third-party stores, correct?

24 A. Yes.

25 Q. And in the last sentence of this

1 HIGHLY CONFIDENTIAL - KLEIDERMACHER
2 paragraph you state, "No app or update could be
3 published on the third-party storefront
4 distributed through Play unless Google had cleared
5 that app or update pursuant to Google's policies,
6 which include at least the same safety and content
7 policies that Google applies to apps distributed
8 directly on Play," correct?

9 A. Correct.

10 Q. And as described here, your declaration
11 suggests or presents a proposal but which Google
12 would review all apps within third-party app
13 stores for full compliance with Google's policies,
14 correct?

15 A. Yes.

16 Q. And Google would also review any updates
17 to any such apps for compliance with Google
18 policies, correct?

19 A. Correct.

20 Q. Now, the proposal here requires a
21 third-party store to make its entire catalog
22 including yet-to-be published apps and updates
23 available to Google Play for review, right?

24 A. Prior to publication, yes.

25 Q. And this would also require app

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2 developers to submit all the apps they intend to
3 distribute on third-party app stores to Google
4 before they launch on the third-party store if
5 that store is carried on Play, correct?

6 A. Google would need to review the -- put
7 the application through our standard review
8 process, whether that is a direct relationship
9 with the -- exactly how that's implemented is
10 unclear.

11 Q. Okay. And I think what you started
12 saying there is that it's unclear whether Google
13 would receive these APKs from the third-party
14 store or directly from the developer; is that what
15 you were saying?

16 A. Correct.

17 Q. Do you have an understanding of what is
18 the goal of the remedies that the court is
19 considering right now?

20 A. I wouldn't say that I have a literal
21 understanding of all the remedies.

22 Q. What's your general understanding of why
23 the court is contemplating imposing an injunction
24 on Google?

25 MR. OLASA: Objection to form.

1 HIGHLY CONFIDENTIAL - KLEIDERMACHER

2 apps from third-party stores first raised?

3 A. I believe -- I'm not sure, but first
4 raised by whom? You mean as part of the
5 declaration composition?

6 Q. By you, I guess, yeah.

7 A. When it was it first raised?

8 Well, to me it was early on in my
9 thinking of the response to this because it seems
10 really obvious that if you're going to review the
11 apps, the only -- on a third-party store, the only
12 way you can ensure that the app isn't published in
13 a noncompliant fashion is you'd have to do some
14 form of notarization where you actually sign the
15 app and you execute some form of technical
16 limitation that would ensure that the app can't
17 just simply be installed and distributed without
18 that review. It's a pretty common approach.

19 Q. Did you -- sorry. Didn't mean to cut
20 you off.

21 Did you discuss this modification of the
22 Android OS with anyone?

23 MR. OLASA: Mr. Kleidermacher --

24 Q. Other than lawyers. To be clear. Every
25 time I ask you, other than lawyers.

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2 A. No.

3 Q. If Google is ordered to distribute
4 third-party apps on the Play Store or a
5 third-party store is on the Play Store, who would
6 be the final decision-maker on whether or not to
7 modify the Android OS to prohibit the installation
8 of unapproved apps from third-party stores?

9 A. I don't know.

10 Q. Who do you think are the potential
11 candidates for providing such approval?

12 A. That would include my manager Seang, his
13 manager Sameer, and possibly the head of the Play
14 and Android developer division, Sam.

15 Q. If you'd turn to paragraph 11, and here
16 you write: In addition to vetting third-party app
17 catalog, Google would also likely require the app
18 store itself to follow Play's policies. Do you
19 see that?

20 A. Yes.

21 Q. And by Play policies I gather that you
22 mean the existing policies that apply to any
23 third-party app?

24 A. Yes.

25 Q. And here again you say that Google would

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2 likely require. I take it that Google has not yet
3 determined even as a contingency plan whether or
4 not it will require third-party app stores to
5 follow the Play policy; is that right?

6 A. No decisions about anything in my
7 proposal has been made, have been made.

8 Q. If you turn to the last sentence in
9 paragraph 11, you state, "Google would also have
10 to develop and implement behavior policies for
11 third-party app store distributed through Play."
12 Do you see that?

13 A. Yes.

14 Q. What would be included in behavior
15 policies?

16 A. An example in the behavior policy might
17 be the need to ensure that the app store does not
18 silently install apps.

19 Q. Any other behavior policies that come to
20 mind?

21 A. Nothing comes to mind.

22 Q. Behavior policies here are separate from
23 the Play policies described in the first sentence
24 of paragraph 11, right?

25 A. Right.

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2 Q. Is there a chance that the costs are
3 closer to [REDACTED] or [REDACTED]

4 A. I mean, these are pretty rough
5 estimates, so part of those estimates are more
6 accurate than others. So, I mean, it's also --
7 it's -- I feel like it's in the [REDACTED]
8 range. I feel pretty good about that estimate.
9 If you say it's as high as [REDACTED] that feels a
10 little high for me. [REDACTED] feels low to me. But is
11 it possible that if a very, a very fine-grained
12 analysis was done that we'd hit [REDACTED] or [REDACTED] I'd say
13 it's possible.

14 Q. Okay. You're not staking your life on
15 that, in other words. Okay. Understood.

16 So I want to talk a little bit about
17 each of these numbers to try and see if we can get
18 a little clarity on them.

19 So, first of all, you have seven sort
20 of, you call it, team functions but are cost items
21 that roll up into this [REDACTED] number, right?

22 A. Yes.

23 Q. And you provide no itemized breakdown in
24 your declaration of how these seven different cost
25 items figure into that aggregate [REDACTED]

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2 number, right?

3 A. Right.

4 Q. And you provide no support in your
5 declaration for how you reached the [REDACTED]
6 sum for these seven items, correct?

7 A. It's supported -- the support that's in
8 the declaration is what is written in the
9 declaration.

10 Q. Okay. There's no math in the
11 declaration, for instance, showing "I looked at
12 one number, I looked at the other, I added them
13 up, here's how I got to [REDACTED] correct?

14 A. In the declaration. I mean, obviously,
15 I did that math but it's not in the declaration.

16 Q. Okay. And none of the other declarants
17 provided any support for this [REDACTED] number
18 either, correct?

19 A. I don't believe the other declarants
20 were covering this same area of discussion.

21 Q. Presumably Google has internal budgets
22 and documents that show its actual costs for these
23 seven line items, right?

24 A. I'm not aware of a -- of an existing
25 document that would cover all those things. It

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2 would, it would be something that would have to be
3 determined and examined, computed.

4 Q. And would that be -- well, strike that.

5 To try and determine and examine that,
6 is there a finance team at Google that would be
7 qualified to look at the actual financial data and
8 estimate these costs?

9 A. I believe so, yes.

10 Q. But you did not speak to them in putting
11 together this declaration, right?

12 A. I did not.

13 Q. You say you did do some math in your, I
14 guess, in your head to reach this [REDACTED]
15 number. You know what, let me not assume.

16 Did you create any documents on which
17 you've done the math to get [REDACTED] for these
18 seven items?

19 A. Yes.

20 Q. You have these notes?

21 A. I do.

22 Q. Okay.

23 MR. EVEN: We would ask you to please
24 produce these notes.

25 (Request for production.)

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2 Q. Of the seven cost items here, are those
3 roughly equal to one another or do certain cost
4 items garner higher cost than others?

5 A. Some of them are much higher. The first
6 three rows in the [REDACTED] section are by far
7 the biggest. They account for about 80 percent of
8 the cost.

9 Q. So the first three are about
10 [REDACTED]

11 A. Correct.

12 Q. And does the [REDACTED] number here
13 reflect only what's typically referred to as FTEs
14 or does it also include the cost of running
15 servers, buildings?

16 A. It only includes -- that section only
17 includes FTEs.

18 Q. Okay. So the first team or function of
19 the seven that make up [REDACTED] in cost is app
20 safety, right?

21 A. Yes.

22 Q. Do you supervise the app safety team?

23 A. I have supervised that team for the last
24 seven years.

25 Q. And how many people are on the app

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2 safety team?

3 A. Approximately [REDACTED]

4 Q. And you say that the app safety team
5 develops and maintains on-device and back-end
6 infrastructure used to protect users against
7 app-related risks; is that right?

8 A. Yes.

9 Q. So, for instance, is Play Protect one of
10 the things that the app safety team is in charge
11 of developing?

12 A. Yes.

13 Q. What is the total cost of the app safety
14 team per year?

15 A. My estimate is, it would be, it was [REDACTED]
16 people and I was using [REDACTED] per person as my rough
17 average FTE cost, so a multiple of those two
18 numbers.

19 Q. [REDACTED] or so? Does that sound
20 right?

21 A. Sounds right.

22 Q. Okay. Now, and is that [REDACTED] the
23 number that you put in here?

24 A. Right. What I did was I estimated, I
25 added up all the people and so I came up with this

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2 [REDACTED] for app safety. It was [REDACTED]
3 [REDACTED]
4 [REDACTED] at [REDACTED] a pop, that's
5 [REDACTED]

6 Q. Got it. All right.

7 Now, it sounds like these people do a
8 lot more than app review; is that fair?

9 A. Yes.

10 Q. And so they do, for instance, you said
11 Play Protect, right?

12 A. The App Safety row in particular, yes.

13 Q. But you didn't allocate any portion as
14 the team app review related costs and non-app
15 review related costs of that team, correct?

16 A. Within the app safety team, no, I did
17 not.

18 Q. Now, Play Protect, for instance, would
19 continue operating the same way with or without
20 Epic's injunction, right?

21 A. No.

22 Q. No. That's fine.

23 Now, you say here that this is not quite
24 linear about the app safety team, right?

25 A. Yes, correct.

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2 Q. And that means that you don't think that
3 that number, the [REDACTED] that you think it
4 costs right now, would increase by 20 percent
5 should there be a 20 percent increase in the
6 number of apps to review, right?

7 A. Correct.

8 Q. Did you account for that nonlinearity
9 anywhere in your calculations here?

10 A. Not directly, no.

11 Q. Did you account for the nonlinearity for
12 any other line items on this chart in paragraph 14
13 of your declaration when coming up with the total
14 estimate that you came up with?

15 A. I did not try to break down each, the
16 level of linearity for each of those teams and
17 functions.

18 Q. So your assumption in making that
19 calculation was complete linearity essentially,
20 right?

21 A. No. In my final cost of approximately
22 [REDACTED] I'm assuming a certain growth in the
23 overall program. And so it wasn't a 20 percent
24 growth in the apps, it was a 20 percent growth in
25 the overall cost to administer the program.

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2 Q. Got it. And that estimate is separate
3 from the growth in the number of apps, I take it?

4 A. Yes. I did not attempt to assume any
5 number, particular number of growth in apps.

6 Q. Okay. The second team or function of
7 the seven that make up the [REDACTED] is Trust &
8 Safety, Android & Play Operations, right?

9 A. Yes.

10 Q. And you talk about this in plural these
11 teams, right?

12 A. It's just the name of the team. It's a
13 single team.

14 Q. It's a single team. Okay.

15 And that team is in the Trust & Safety
16 division?

17 A. Correct.

18 Q. And the Trust & Safety division is
19 separate from your team, right?

20 A. Correct.

21 Q. And the Trust & Safety team is run by
22 Laurie Richardson; is that right?

23 A. It reports into Laurie. I'm sorry. The
24 Trust & Safety division reports to Laurie, yes,
25 she leads it.

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2 Q. And I take it that Ms. Richardson and
3 not you would be responsible for the budget for
4 the Trust & Safety, Android & Play team?

5 A. It would not be my budget, but the
6 funding of trust and safety is a little bit, in
7 the U.S., they have their budget, but there is
8 some level of -- I don't know how you want to call
9 it -- either allocation or distribution based on
10 different product teams outside of trust and
11 safety, so you can think of it as being funded.

12 So the Android Ecosystem would fund some
13 aspects of trust and safety even though it's a
14 different division.

15 Q. Okay. But the budget would not be your
16 budget, it would be Ms. Richardson's budget?

17 A. I think it -- certainly from an
18 accounting perspective it would look like it was
19 coming from under Laurie.

20 Q. And is it fair to say that
21 Ms. Richardson would be in the best position to
22 estimate any increase in the costs of her team due
23 to an increase in the number of apps to be
24 reviewed or of the load of work that needed to be
25 done?

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2 trust and safety policy, other Android security
3 engineering, Android framework, Play developer
4 support and Android partner engineering -- all of
5 these folks do things beyond app review, correct?

6 A. They should be in other ways to the
7 overall trust and safety program, yes.

8 Q. And when you said that -- when you took
9 the number of FTEs and multiplied it by [REDACTED] a
10 year to come up with the numbers, you did not try
11 to allocate as between their work on app review
12 and other work that they do, correct?

13 A. What I did is, for the teams that are
14 directly relating -- that only work on trust and
15 safety the program, I allocated all of their FTEs,
16 and that's for the first three rows. I allocated
17 their -- 100 percent of their FTEs for the
18 remaining four rows. I did not allocate
19 100 percent of the FTEs of those organizations, I
20 allocated a percentage, which I estimated it as
21 the portion -- they do quite different things,
22 including trust and safety, and so I allocated a
23 portion of that team that I felt was a reasonable
24 estimate for their allocation towards the overall
25 trust and safety program.

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2 Q. Sir, none of that is in your
3 declaration, correct?

4 A. It's not written here.

5 Q. Okay. So I need to go through it one by
6 one, unfortunately, because I have no idea by now
7 what you did.

8 So for app safety --

9 MR. OLASA: I'm fine with you
10 continuing, but at a good point we need to
11 take a break. We've been going for about
12 an hour and twenty minutes.

13 MR. EVEN: Okay.

14 Q. On app safety we said you took
15 100 percent of the FTEs, multiplied that number by
16 ██████████ a year and came up with a number,
17 correct?

18 A. Correct.

19 Q. And you did not make any attempt to
20 allocate between work that is app review related
21 by these folks and work on other things which they
22 contribute to the overall safety of Android like
23 Play Protect, for instance, right?

24 A. Play Protect is included in the
25 estimate.

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2 Q. So that is a yes, you did not try to
3 allocate between work that they do directly on app
4 review and work that they do on other things,
5 correct?

6 A. I just think the way you're phrasing it
7 is a little confusing to me because Google Play
8 Protect is part of app review.

9 Q. Google Play Protect, as we discussed
10 earlier today, is something that Android performs
11 on every app installed regardless of source,
12 correct?

13 A. Correct, but Google Play Protect
14 technology is part of the overall app review
15 program and has -- it works differently based on
16 whether you're sideloading or whether you're
17 talking about Play Protect aspects that are
18 reviewing apps on Play. They're not all one in
19 the same thing.

20 Q. Sir, all I'm saying is, Play Protect has
21 aspects to it that have nothing to do with app
22 review, correct?

23 A. I believe 100 percent of Google Play
24 Protect is involved in app review.

25 Q. That's not what I asked, sir.

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2 Play Protect is used in multiple places
3 in Android that have nothing to do with app
4 review, correct?

5 A. Incorrect.

6 Q. Okay. Play Protect scans, you said
7 today, Play Protect scans every app that is
8 downloaded/sideloaded, for instance, correct?

9 A. Correct.

10 Q. And that's not app review, correct?

11 A. I consider that part of the app review.

12 Q. You consider that part of the app
13 review?

14 A. It's review of the app. It is doing app
15 review.

16 Q. Okay. Sir, the scan for malware of apps
17 that are sideloaded is not going to change based
18 on your offer or your proposal to vet apps on
19 third-party stores, correct?

20 A. The technology we develop that makes up
21 Play Protect will evolve based on those changes.

22 Q. Sir, do you really not understand what
23 it means to allocate costs if those costs benefit
24 more than the vetting that you are contemplating
25 here?

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2 A. I -- there are many, many, many aspects
3 of the technology that contributes to app review
4 and safety and I didn't see a simple way to break
5 things up in a different way.

6 Q. And that is perfectly a fine answer,
7 sir. If you didn't see a simple way and therefore
8 you didn't do it, that's fine. But I need to
9 first understand that you understand what I'm
10 talking about.

11 You understand that the Play Protect
12 technology is used in the app review of apps to be
13 distributed on Play and in other places on
14 Android, correct?

15 A. Yes.

16 Q. And your suggestion is that Play Protect
17 is now going to be extended to review the catalog
18 of apps on third-party stores, correct?

19 A. Yes.

20 MR. OLASA: Objection to form.

21 Q. And that is not going to affect the fact
22 that Play Protect is going to continue to be used
23 in other places on Android, correct?

24 A. Google Play Protect will continue, the
25 technology will continue to be used in other

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2 places, correct.

3 Q. And you've done no attempt to allocate
4 in the [REDACTED] a year that app safety costs
5 between the benefits to the pre-distribution on
6 Play app review and the benefit that inures to
7 other places on Android such as the review of
8 applications that are downloaded from sideloading,
9 from preloaded app store; is that correct?

10 MR. OLASA: Objection to form.

11 A. The only method that, to me, was
12 practical to make this estimate was to compute the
13 cost of the trust and safety program, and then
14 look at them in a percentage increase of that
15 overall program, and that's what I did.

16 Q. Okay.

17 MR. EVEN: All right. Let's take a
18 break.

19 THE VIDEOGRAPHER: All right. We are
20 now going off the record at 2:47 p.m.
21 Pacific and this ends Media Unit 4.

22 (Off the record.)

23 (Resumed.)

24 THE VIDEOGRAPHER: We're now going
25 back on the record. The time is 3:01 p.m.

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2 A. So initially I was concerned about the
3 confidential information, and so upon discussing
4 it with counsel, we decided to keep it at the high
5 level in the actual declaration itself.

6 Q. Okay. Talking about Trust & Safety,
7 Android & Play Policy, that's a team that you say
8 develops and maintains safety policies, right?

9 A. Yes.

10 Q. Can you give me an example of what are
11 safety policies that this team develops?

12 A. Sure. Examples would be the malware
13 policy, the unwanted software policy, policies for
14 what kinds of permissions apps are allowed to
15 request and access.

16 Q. Are these -- are members of these teams
17 engineers, lawyers; what are they?

18 A. They tend to be policy analysts. I'm
19 not sure exactly what the official job role is,
20 but most of them are policy experts.

21 Q. And you envision a 20 percent increase
22 in the number of policy analysts Google would need
23 to write all the new policies pertaining to
24 third-party app stores distributed through Play
25 Store?

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2 A. That is not my assertion.

3 Q. What is your assertion that you foresee
4 a need to -- well, what is the assumption --
5 strike that.

6 What is the assumption that you made
7 with respect to the increase in cost stemming from
8 the injunction as it pertains to the Trust &
9 Safety, Android & Play Policy group?

10 A. I didn't allocate a specific -- as I
11 described earlier, I calculated the cost, the
12 annual cost of running the program and that
13 assumed the overall cost might grow 20 percent
14 over time. I did not allocate -- so that turned
15 into [REDACTED] I did not allocate, of that
16 [REDACTED] I did not go through all of these
17 different sections and allocate a portion of that
18 to the [REDACTED]

19 Q. Got it. You agree with me that some of
20 these line items are going to be more linear than
21 others, correct?

22 A. Correct.

23 Q. But you've not drawn that distinction
24 here, you've gone and done one sort of blended
25 price or cost increase across all line items,

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2 correct?

3 A. Correct, I did consider that. And after
4 looking through all the different roles and
5 portions of the program, I just didn't -- it
6 didn't -- I found it very difficult to do that in
7 any way that can be explained that I thought made
8 a lot of sense, and so I thought the easiest and
9 most reasonable approach, given the amount of time
10 constraint, was to calculate how much we were
11 spending and assume a 20 percent growth in that.

12 Q. Okay. What is your educational
13 background?

14 A. I have a university degree in computer
15 science.

16 Q. Got it. Do you have any degree in
17 economics or finance or business?

18 A. I do not.

19 Q. Google has a lot of people working for
20 it that do have these kind of degrees, correct?

21 A. Yes.

22 Q. You mentioned the number [REDACTED] a
23 year, where did you get that number from?

24 A. So I have seen on occasion, as we've
25 done our annual planning, I've seen estimates for

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2 FTEs, FTE costs, and those estimates obviously
3 range quite widely depending on the role, level,
4 and geography. My [REDACTED] estimate is based on what
5 felt like a reasonable conservative average for
6 the U.S., for which most of these, most of these
7 people are in the U.S. I thought it was a
8 conservative estimate. I've seen higher estimates
9 for average FTEs in these roles, but I felt [REDACTED]
10 was a reasonable conservative estimate.

11 Q. This is, again, based on your prior
12 experience, it's not based on any document that
13 you've looked at specifically for this, for
14 purposes of this declaration?

15 A. Correct.

16 Q. And you certainly have not detailed in
17 your declaration how you came up with that [REDACTED]
18 number, correct?

19 A. It's just my estimate for a single FTE.

20 Q. Okay. The next line is Malware
21 Reviewers. Those are the temps that you
22 mentioned, correct?

23 A. Correct.

24 Q. And how did you get at [REDACTED] here?

25 A. I got this pretty directly from Ron. My